
(1911) 01 MAD CK 0012
In the Madras High Court

Thachakavil Unni Koya

APPELLANT

Vs

Arapayil Pathutti Ummah

RESPONDENT

Date of Decision : 26-01-1911

Acts Referred:

Citation : (1911) 21 MLJ 577

Judgement

1. The suit was instituted for recovery of damages on the ground that the defendant who attached in execution of his decree against the plaintiff a

decree for money which the plaintiff held against a third person allowed the decree by his negligence or by collusion with the judgment-debtor of

the plaintiff to lapse by efflux of time. The defendant has realised the amount of his decree from the properties of the plaintiff. The Subordinate

Judge gave a decree to the plaintiff finding the facts in his favour. Sankaran Nair J. in revision has set aside the judgment of the Subordinate judge

on the ground that the plaintiff, the holder of the attached decree, could have executed the decree in spite of the attachment, and in support of this

proposition the learned judge relies on the cases Patumma and Others Vs. Idivi Beari, , Saint Pillai v. Krishnaswamy Chetty ILR (1897) M. 417

and Aoher Chandra Dass v. Lal Mohan Dass ILR (1892) C. 778. It is contended on behalf of the plaintiff who appeals against his judgment that

Section 373 of the CPC (Act XIV of 1882), expressly lays down that when a decree is attached execution of it shall be stayed by the court which

passed the decree unless and until the court which issued the notice of attachment cancels the notice or the judgment creditor at whose instance the

attachment was made applies for execution of the decree so attached.

2. We think this contention is well founded. It is urged on behalf of the

respondent that the words ""stay the execution"" in Section 273 must be understood to mean only the taking of the proceeds of the execution and that the section does not preclude the holder of the attached decree from taking all the necessary steps for its execution short of actually receiving the amount. We think that such a construction would be entirely artificial.

As regards the authorities it would appear that so far as the case of Patumma and Others Vs. Idivi Beari, is concerned the learned Judges who decided the case did not wish that their decision should be used as a precedent for the general proposition which is now, relied upon on behalf of the respondent. In Adhar Chandra Dass v. Lal Mohan Dass ILR (1892) C. 778 there is no doubt a general dictum of Maclean C.J. that the attachment of a decree does not prevent the holder of that decree from executing it, but Banerji J. does not go so far and he limits his judgment to another ground. Maclean C.J., if we may say so with respect, does not attempt to show how the words of Section 273 are compatible with his construction but proceeds on what appears to us to be general grounds of expediency. The case reported in Sami Pillai v. Krishnaswamy Chetty ILR (1897) M. 417 has no relevancy to the present question. If the holder of the attached decree could not execute it then any application made by him for that purpose would have been infructuous in the sense that it would not be competent for the court to grant it, and it would further follow that such an application, if made, would have been useless to save limitation. See Munavar Hussain v. Jani Bigai Shankar ILR (1905) A. 619, Puma Chandra Mandal v. Ratha Nath Dass ILR (1906) C. 8 and Gurupadappa Basappa v. Virabhadrapa Irsangappa ILR (1882) B. 459 . We are therefore of opinion that the defendant, the attaching judgment-creditor, was the only person who could have executed the attached decree.

3. The judgment of Sankaran Nair J. must be reversed and that of the Subordinate Judge restored. Each party will bear the costs of this appeal and before Sankaran Nair J.